

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6784 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KUSUMBAHEN BACHUBHAI MEHTA

Versus

NAVSARI NAGAR PALIKA

Appearance:

MR NR SHAHANI for Petitioners

Mr. V B Gharania, A.G.P. for respondent nos. 2, 3, 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/11/98

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 20.2.85 of the Presiding Officer, Labour Court, Navsari in Reference (LCN) Nos. 693, 694 and 695 of 1983 and for a direction to the respondent no. 3 to give continuity of service to the petitioners from the their respective dates of appointment i.e. 1.1.68, to grant them all consequential benefits including salary on

that basis and for a direction to treat them as having been transferred from respondent no.1 to the employment of respondent nos. 2 and 3. The petitioner nos. 1 and 2 were appointed on 1.1.68 as Field Workers in the Family Planning Centre and the petitioner no. 3 was appointed as such on 13.2.70 in the Family Planning Centre. That Centre was closed by respondent no.1 Nagarpalika with effect from 1.7.77. The petitioner no.1 was appointed as Auxiliary Nurse Midwife by the respondent no.2 with effect from 9.8.77 in the pay scale of Rs.260-400 in Urban Family Planning Centre (Type-III) at M.G.G. hospital, Navsari, while the petitioner no. 2 was absorbed by the respondent no.2 as Field Worker (Male) with effect from 25.8.77 in Urban Family Planning Centre Maternity Home, Old Civil Hospital, Surat while the petitioner no.3 was also given fresh appointment as Field Worker (Male) by the respondent no.2 in Urban Family Planning Centre, Navsari. Smt.K B Mehta and G R Patel were appointed by an order dated 9.8.77 and V M Shah was appointed by an order dated 25.8.77 as fresh in the State Government as field worker subject to the condition that previous service rendered by them as Field Worker under Local Authority i.e. Navsari Municipality will not be counted for any purpose and this will be a fresh appointment. The petitioners challenged the appointments before Labour Court under References noted above and the Presiding Officer, Navsari by his award dated 20.2.85 dismissed the References qua continuity in service.

4. The learned counsel for the petitioners submitted that the petitioners were appointed with respondent no. 1 and 100% grant was given by the State Government and staff pattern was also approved by the Government. After closure of the aforesaid departments, the petitioners were taken to another limb of the Government where they were given an appointment but their appointments was made afresh. Hence, this petition has been moved for quashing the Common Award passed by the Labour Court in the above References and for continuity of their services, gratuity, leave, pension and all other consequential benefits etc. The learned counsel for the petitioner also contended that the Labour Court has committed an error on the face of the record and therefore, the Award of the Labour Court is not sustainable in the eye of law. He relied on the case of Usha Rani Dutta and others vs. State Industrial Court, Indore and others reported in AIR 1985, SC, 1016 wherein it is held that since the inception of the Clinic the employees were the employees of the Bhilai Steel Plant and that the absorption was an acceptance of reality avoiding the pretence. The employees could not be treated as

fresh employees from the date of absorption and their services since the commencement of employment somewhere in 1964 would be treated as continuous for the purpose of gratuity, retrenchment and leave etc. The Clinic had no independent existence. It was part and parcel of Bhilai Steel Plant administrative set up. May be for purposes of accounting 100 per cent grant received from the Government of India was kept in a separate account but that does not clothe the Clinic with any independent existence. The Clinic was managed by Chief Medical Officer of Bhilai Steel Plant with a designation of Administrative Officer of the Clinic and was accountable for the money received from the Government of India as grant to the undertaking called Bhilai Steel Plant and if it was never contended that the employees of the Clinic were the employees of the Government of India, the employees of the Clinic were the employees of the Bhilai Steel Plant working in a Department called Clinic under the administrative control of Chief Medical Officer who was under the overall administrative control of the management of Bhilai Steel Plant.

5. The learned counsel for the petitioner further relied on the case of Gurmail Singh and others vs. State of Punjab and others, reported in AIR 1993, SC, 1388 wherein it has been held that the Court could review the arrangement between the State Government and the Corporation and issue appropriate direction. Indeed, such directions could be issued even if the elements of the transfer in that case fell short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied as a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporations are obliged to adhere to. In that case, tubewell operators were transferred to another undertaking of the State Government and the Supreme Court declared that the appellants will be entitled to add their services to their length of service in the Corporation for the purpose of computation of salary, length of service, and retirement benefits.

6. In the present case, the petitioners were serving as Field Workers in the Family Planning Centre in Navsari Nagarpalika. Later on after closing of Family Planning Centre, the petitioners were appointed in Urban Family Planning Centre type-III in GG Hospital, Navsari. under the Director of Health Services, respondent no.2 and petitioner no.1 was re-appointed afresh in the Urban Family Planning Centre and M.G.G. hospital, Navsari, while petitioner no.2 was appointed as Field worker

(Male) in Urban Family Planning Centre Maternity Home, Civil Hospital, Surat and the petitioner no.3 was appointed as Field Worker (Male) in Urban Family Planning Centre, Navsari. By transferring from one limb to another limb of the State Government and giving fresh appointments, the petitioners suffered a lot in terms of monetary benefits.

7. I have heard the learned Assistant Government Pleader. He has justified the Award of the Labour Court.

8. As per the rules enunciated by the Supreme Court in the aforesaid cases, the petitioners are entitled to continuity of their service from the date of their respective initial appointments. The Labour Court has committed an error on the face of the record in not giving continuity of service to the petitioners from the date of their initial appointments. As such, the common Award dated 20.2.85 passed by the Labour Court is liable to be set aside.

9. Accordingly, the petition is allowed and the judgment and Award dated 20.2.85 passed by the Labour Court, Navsari is hereby quashed and set aside. The respondent nos. 2 and 3 are directed to give continuity of service to the petitioners from the date of their initial appointments with all other consequential benefits. Clause-4 of the appointment letters dated 9.8.77 and 25.8.77 are held to be inconsistent and contrary to the decisions of the Supreme Court and is directed to be struck down from the appointment orders of the petitioners. The respondent nos. 2 and 3 are directed to give continuity of service to the petitioners from the respective dates of their joining services, i.e. 1.1.68 with all consequential benefits and pay the arrears as admissible as per rules and regulations. If any of the petitioners has already retired, his/her pension shall be revised accordingly within three months from the date of receipt of writ from this Court. The judgment and Award of the Labour Court is modified to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

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